

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

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Chapters 1-542

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PUBLIC LAWS

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formity with subchapter II; and the executive officer shall remain an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract shall cause the officer to be an employee of the corporation under this Act;

(4) Any person who states in writing to the commission that he waives all the benefits and privileges provided by the workers' compensation laws, provided that the commission shall have found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which he is employed and that this waiver was not a prerequisite condition to employment.

Any person may revoke or rescind his waiver upon 30 days' written notice to the commission and his employer. The parent, spouse or child of a person who has made a waiver under the previous sentence may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commissioner finds that the waiver is not a prerequisite condition to employment and if the parent, spouse or child is employed by the same corporation which employs the person who has made the first waiver;

(5) The parent, spouse or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse or child of a partner who is employed by the partnership of that partner may state, in writing, that he waives all the benefits and privileges provided by the workers' compensation laws if the commission finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 1-A; or

(7) An independent contractor; or

(8) If a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. No insurance company may charge a premium to any person for any employee excluded by this subparagraph.

Sec. 2. 39 MRSA §2, sub-§13 is enacted to read:

13. Independent contractor. "Independent contractor" means a person who performs services for another

under contract, but who is not under the essential control or superintendence of the other person while performing those services. In determining whether such a relationship exists, the commission shall consider the following factors:

A. Whether or not a contract exists for the person to perform a certain piece or kind of work at a fixed price;

B. Whether or not the person employs assistants with the right to supervise their activities;

C. Whether or not the person has an obligation to furnish any necessary tools, supplies and materials;

D. Whether or not the person has the right to control the progress of the work, except as to final results;

E. Whether or not the work is part of the regular business of the employer;

F. Whether or not the person's business or occupation is typically of an independent nature;

G. The amount of time for which the person is employed; and

H. The method of payment, whether by time or by job.

In applying these factors, the commission shall not give any particular factor a greater weight than any other factor, nor shall the existence or absence of any one factor be decisive. The commission shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.

Effective September 29, 1987.

CHAPTER 410

S.P. 477 — L.D. 1440

AN ACT to Expand the Authority of the Board of Underground Storage Tank Installers.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA c. 105, first 2 lines, as enacted by PL 1985, c. 496, Pt. A, §2, are repealed and the following enacted in their place:

CHAPTER 104-A

UNDERGROUND OIL AND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS

Sec. 2. 32 MRSA §10001, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

§10001. Declaration of purpose

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services.

Sec. 3. 32 MRSA §10002, sub-§§3-A, 5-A and 5-B are enacted to read:

3-A. Hazardous substance. "Hazardous substance" means any substance defined as such in accordance with Title 38, section 1362.

5-A. Underground hazardous substance storage tank. "Underground hazardous substance storage tank" means any tank or container, 10% or more of which is beneath the surface of the ground, together with associated piping and dispensing facilities and which is used or intended to be used for the storage or supply of hazardous substances as defined in subsection 3-A. The term "underground hazardous substance storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area where they are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

5-B. Underground hazardous substance storage tank installer. "Underground hazardous substance storage tank installer" means a person certified under this chapter to install and to remove underground hazardous substance storage tanks.

Sec. 4. 32 MRSA §10003, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

§10003. Board of Underground Storage Tank Installers; establishment; compensation

1. Establishment and membership. There is established within the Department of Environmental Protection, a ~~the~~ Board of Underground ~~Oil~~ Storage Tank Installers. The board shall consist of 7 members appointed by the Governor as follows: One from the Department of Environmental Protection; one from either the Maine Oil Dealer's Association, ~~the Pine Tree Gas Retailers Association~~ or the Maine Petroleum Association; one underground oil or underground hazardous substance storage tank installer; one from either the Oil and Solid Fuel Board, the Plumber's Examining Board or the State Board of Certification for Geologists and Soil Scientists; ~~one from the Board of Environmental Protection~~ one from the Maine Chamber of Commerce and Industry; and

2 public members.

2. Terms of appointment. The Governor, within 60 days following the effective date of this chapter, shall appoint 3 board members for ~~a term~~ terms of one year, 3 for ~~a term~~ terms of 2 years and one for a term of 3 years. The Governor shall appoint by October 1, 1987, a board member from the Maine Chamber of Commerce and Industry for an initial term of one year. Appointments made thereafter shall be for 3-year terms, but no person may be appointed to serve more than 2 consecutive terms at any one time. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar days of the year in which they are appointed, before commencing the terms prescribed by this section.

Any member of the board may be removed from office for cause by the Governor. A member may not serve more than 2 full successive terms provided that, for this purpose only, a period actually served which exceeds 1/2 of the 3-year term shall be deemed a full term.

3. Meetings. The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any 2 3 board members. A majority of the members of the board shall constitute a quorum for all purposes.

4. Compensation. Members of the board shall receive no compensation for their services, but are entitled to expenses on the same basis as provided for state employees.

Sec. 5. 32 MRSA §10004, sub-§2, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

2. Rules. The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil or underground hazardous substance storage tank installation and removal.

Sec. 6. 32 MRSA §10005, as amended by PL 1985, c. 785, Pt. B, §7, is further amended to read:

§10005. Board of Underground Storage Tank Installers; administrative provisions

1. Officers. The board shall appoint a secretary and may appoint other officers as it ~~deems~~ determines necessary.

2. Employees. With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

3. Budget. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665.

Sec. 7. 32 MRSA §10006, sub-§1, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

1. Certification required. No person may practice, or hold himself out as authorized to practice, as an underground oil or underground hazardous substance storage tank installer in this State or use the words "underground oil storage tank installer" or "underground hazardous substance storage tank installer" or other words or letters to indicate that the person using the words or letters is a certified underground oil or underground hazardous substance storage tank installer practitioner unless he is certified in accordance with this chapter.

Sec. 8. 32 MRSA §10008, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

§10008. Reciprocity

A person who is a resident of the State and has been certified in another state as an underground oil or underground hazardous substance storage tank installer may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil or underground hazardous substance storage tank installer, provided that a person submits satisfactory evidence of certification as an underground oil or underground hazardous substance storage tank installer in another state under qualifications equivalent to those specified in this chapter.

Sec. 9. 32 MRSA §10009, as amended by PL 1985, c. 763, Pt. A, §95, is repealed and the following enacted in its place:

§10009. Certification requirements for persons working as underground hazardous substance storage tank installers

1. Certification requirements for persons now working as underground hazardous substance storage tank installers. A certificate may be granted to those persons who have been employed as underground hazardous substance tank installers for at least 2 years prior to October 1, 1987, by one of the following means:

A. If the person has passed an oral test based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground

hazardous substances storage facility installations;

B. If the person has passed a written test based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage facility installations; or

C. If the person has completed successful installation of an underground hazardous substance storage facility under the supervision of a designated representative of the Department of Environmental Protection.

This section does not apply after April 1, 1989.

Sec. 10. 32 MRSA §10010, first ¶, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

An applicant applying for certification as an underground oil storage tank installer or an underground hazardous substance tank installer shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements.

Sec. 11. 32 MRSA §10010, sub-§3, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

3. Education and examination for certification of new underground oil storage tank installers. An applicant ~~shall~~ must meet the following requirements:

A. He shall have passed a written or oral examination based on Title 38, chapter 3, subchapter II-B, and any rules promulgated thereunder by the Board of Environmental Protection concerning the installation of underground oil storage tanks; and

B. He shall have completed successful installation of an underground oil storage tank under the supervision of a designated representative of the Department of Environmental Protection.

Sec. 12. 32 MRSA §10010, sub-§4 is enacted to read:

4. Education and examination for certification of new underground hazardous substance storage tank installers. An applicant must meet the following requirements:

A. He shall have passed a written or oral examination based on Title 38, section 1364, subsection 2, and any rules promulgated under that subsection by the Board of Environmental Protection concerning underground hazardous substance storage tank installation; and

B. He shall have completed successful installation of an underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection.

Sec. 13. 32 MRSA §10010-A, first ¶, as enacted by PL 1985, c. 763, Pt. A, §96, is amended to read:

Pending To provide for the completion of the on-site installation of an underground oil or underground hazardous substance storage tank under the supervision of a designated representative of the Department of Environmental Protection, the Board of Underground Oil Storage Tank Installers may issue a provisional certificate valid for no more than 6 months after issuance to tank installers with less than 2 years' experience who have successfully completed the written examination requirements pursuant to Title 32, section 10010.

Sec. 14. 32 MRSA §10011, sub-§§1 and 2, as enacted by PL 1985, c. 496, Pt. A, §2, are amended to read:

1. Requirement fees. Only a person satisfying the requirements of section 10010, subsections 1 and 2, may apply for examination in such a manner as the board prescribes. The application shall be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3 or 4, may apply for reexamination upon payment of the prescribed fee.

2. Content. The written examination shall test the applicant's knowledge of the skills and knowledge relating to storage tank installation and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve an examination for underground oil storage tank installers and underground hazardous substance storage tank installers and establish standards for an acceptable performance.

Sec. 15. 32 MRSA §10012, sub-§2, as amended by PL 1985, c. 626, §1, is further amended to read:

2. Disposal of fees. All fees received by the board related to underground oil storage tank installers shall be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. All fees received by the board related to underground hazardous substance storage tank installers shall be paid to the Treasurer of State to be deposited into the Hazardous Waste Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees in the respective accounts shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

Sec. 16. 32 MRSA §10014, sub-§2, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

2. Inactive status. Upon request, the board shall grant inactive status to a certified person who does not practice or present himself as an underground oil tank installer or an underground hazardous substance storage tank installer and maintains any continuing competency requirements established by the board.

Sec. 17. 32 MRSA §10015, sub-§2, ¶B, as enacted by PL 1985, c. 496, Pt. A, §2, is amended to read:

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil or underground hazardous substance storage tank installation or removal, or violation of any standard of professional behavior which has been established by the board;

Effective September 29, 1987.

CHAPTER 411

S.P. 626 — L.D. 1837

AN ACT to Establish the Bureau of Intergovernmental Drug Enforcement within the Department of Public Safety.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 25 MRSA §2901, as amended by PL 1981, c. 98, §3, is further amended to read:

§2901. Department; commissioner

There is hereby created and established the Department of Public Safety to coordinate and efficiently manage the law enforcement and public safety responsibilities of the State of Maine, to consist of the Commissioner of Public Safety, hereafter in this chapter called "commissioner," who shall be appointed by the Governor, subject to review by the Joint Standing Committee on State Government and to confirmation by the Legislature, to serve at the pleasure of the Governor, and the following as heretofore created and established: The Bureau of State Police, the Bureau of Liquor Enforcement, the Office of the State Fire Marshal, the Maine Criminal Justice Academy, the Maine Highway Safety Committee and the Vehicle Equipment Safety Commission Bureau of Intergovernmental Drug Enforcement.

Sec. 2. 25 MRSA §2902, sub-§4, as amended by PL 1983, c. 812, §153, is further amended to read:

4. Maine Highway Safety Committee. The Maine Highway Safety Committee, as authorized by Title 5, section 12004, subsection 10, which shall be under the direction of the Commissioner of Public Safety. The committee shall consist of not more than 25 members selected by the Governor from state, civic and industrial organizations and individuals with interests relating to highway safety. The committee members shall serve at the pleasure of the Governor and shall be compensated in accordance with Title 5, chapter 379. The committee shall stimulate active support for highway safety measures and programs and shall advise the Department of Pub-